

REMARKS/ARGUMENTS

Art Rejections

Claims 1-42 were examined on their merits. Claim 20 has been amended while claims 43-84 have been added to the application. Therefore, claims 1-84 are currently pending in the present application.

1. Claims 1-19, 21-42 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Voges, U.S. Patent No. 5,894,891 (“Voges”). These rejections are respectfully traversed for at least the following reasons. Claims 1, 21, 23, and 25 are all independent claims. Claims 2-19 ultimately depend from independent claim 1. Claim 22 depends from claim 21. Claim 24 depends from independent claims 23. Claims 26-42 ultimately depend from independent claim 25.

To be an “anticipation” rejection under 35 U.S.C. § 102(b), the reference must teach every element and recitation of the Applicants’ claims. Rejections under 35 U.S.C. § 102(b) are proper only when the claimed subject matter is identically disclosed or described in the prior art. Thus, the reference must clearly and unequivocally disclose every element and recitation of the claimed invention.

Voges is deficient as an anticipatory reference in relation to independent claims 1, 21, 23, and 25 of the present patent application for at least the following reasons. The device disclosed by Voges does not disclose the feature of the claimed subject matter of “the housing provides for a substantially unobstructed air flow between the ejection head and the outlet when air traverses the air flow path from the inlet to the outlet.” More particularly, the device of the

claimed subject matter has *no obstruction* at any point between the most downstream part of the ejection head 6 and the outlet 9.

As explained in paragraph 0038 of the Published Application No. 20030072717 (“Application”), the air flow path being substantially free from obstruction decreases turbulence. The advantages of decreased turbulence are explained in paragraph 0057 of the Application. In contrast, the device disclosed in Voges has a heating means 20 disposed between the ejection orifices 15 (ejection head) and the open end of the mouth piece 5 (outlet). The heating means 20 of Voges obstructs the air flow path between the ejection head and the outlet and also provides a site where composition can become attached to, or stuck on the side of. The disadvantages of such composition being deposited are discussed in paragraph 0006 of the Application. Thus, the device disclosed in Voges is distinguishable from the claimed subject matter.

Because each element of the invention is not present in Voges, Voges cannot anticipate the claimed subject matter. As such, the Examiner is respectfully requested to withdraw the § 102(b) rejection as to independent claims 1, 21, 23, and 25 and from the claims that depend therefrom.

2. Claim 20 stands rejected under 35 U.S.C. § 103(a) as being obvious and unpatentable over Voges in view of Gonzalez, U.S. Patent No. 455,614 (“Gonzalez”). Claim 20 depends from independent claim 1.

To be an “obviousness” refection under 35 U.S.C. § 103, the subject matter as a whole would have to have been obvious at the time of the invention to a person having ordinary skill in the art to which the subject matter pertains. The reference must teach every element and

recitation of the Applicants' claims to render the claimed subject matter obvious. To establish a prima facie case of obviousness the Examiner must show that the prior art references, when combined, teach or suggest all of the claim limitations. MPEP § 2143. The references must also teach a motivation to combine the references and also a reasonable expectation that the claimed combination will be successful. MPEP §2141.03. Applicant respectfully submits that the references cited above by the Examiner fail to teach or suggest all of the claim limitations as set forth in the present application.

In order to sustain a prima facie case of obviousness, Vogus and Gonzalez must teach or suggest every claim limitation. As discussed above, Voges is deficient with respect to claim 1 for at least the reasons stated above. Therefore, the Examiner must rely on Gonzalez to compensate for the foregoing deficiencies. However, the deficiencies in the Voges patent are in no way remedied by the addition of the subject matter of Gonzalez. More particularly, the device disclosed in the Gonzalez patent similarly fails to disclose the substantially unobstructed air flow, as claimed. In the Gonzalez device, in the flow path downstream of the perforated diaphragm C, the housing cross section sharply inwardly tapers by approximately half of its diameter (therefore, to only a quarter of its surface area) and then extends through a narrow duct into a widened opening where it then increases, adjacent to screw-cap D, then again restricts, then again increases. This tortuous flow path can in no way be considered to be substantially unobstructed as recited in the claimed subject matter.

Because Gonzalez fails to disclose the above identified recitations with respect to independent claim 1, Applicants submit that claim 20 is patentable at least by virtue of its

dependency. The Examiner is therefore respectfully requested to withdraw the §103(a) rejection as to claim 20.

Objections

3. The drawings are objected to under 37 CFR 1.83(a) as not showing every feature of the invention specified in claim 20. Applicants respectfully submit that the application as filed does in fact show all the features of claim 20. Applicants direct the Examiner to review paragraph 0050 of the Application (which refers to the inner walls of the housing being smooth) in conjunction with the smooth cylindrical walls of the housing 7 shown in the drawings that accompany the application. Accordingly, Applicants respectfully submit that the drawings in combination with the written description conform to the requirements of 37 CFR 1.83(a).

New Claims

Claims 43-84 have been added in the present application. Applicants believe that newly added claims 43-84 are fully supported by the specification, contain no new matter, and are believed to be allowable over the prior art of record.

CONCLUSION

In view of the above, reconsideration and allowance of this application are now believed to be in order, and such actions are hereby solicited. If any points remain in issue which the Examiner feels may be best resolved through a personal or telephone interview, the Examiner is kindly requested to contact the undersigned at the telephone number listed below.

After the above Amendments, claims 1-84 are still pending in the application, of which claims 1, 21, 23, 25, 43, 63, 65, and 67 are independent claims. Thus, there are 84 total claims and 8 independent claims. Prior to the above amendments, there were 42 total claims and 4 independent claims. Therefore, the fee for 42 additional claims and 4 additional independent claims are believed due.

Applicants hereby petition for any extension of time which may be required to maintain the pendency of this case, and any required fee, except for the Issue Fee, for such extension is to be charged to Deposit Account No. 50-2613 (Order No. 38466.00008.RCE1). Please also credit any overpayments to said Deposit Account.

Respectfully Submitted,

Dated: July 15, 2005
PAUL, HASTINGS, JANOFSKY & WALKER LLP
CUSTOMER NO. 36183
3579 Valley Centre Drive
San Diego, CA 92130
PH: (858) 720-2500
FX: (858) 720-2555

By: Christopher K. Eppich
Christopher K. Eppich
Reg. No. 52,868